

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANNY JOE BARBER, III,

Plaintiff,

v.

T. WALKER, and KITSAP COUNTY  
SHERIFF'S DEPARTMENT ,

Defendant.

CASE NO. 3:24-cv-05634-RSM-BAT

**REPORT AND  
RECOMMENDATION**

On July 29, 2024, Plaintiff, Danny Joe Barber, III, filed a prisoner § 1983 complaint alleging Defendants T. Walker, a corrections officer and the Kitsap County Jail failed to preserve Plaintiff's property and also denied him a proper grievance process. Dkts. 1-1, 8. The Court must review complaints filed by detainees under 28 U.S.C. § 1915A(a), and must "dismiss the complaint, or any portion of the complaint, if it is: (1) frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." § 1915A(b); *accord* § 1915(e)(2); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

The Court has reviewed the complaint and recommends it be DISMISSED with prejudice for the reasons below. Leave to amend should be denied because no amendment would cure the barriers to relief currently, and thus amendment would be futile. *See Lucas v. Dep't of*

1 *Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (the Court may deny leave to amend  
2 if “it is absolutely clear that no amendment can cure the defect.”).

### 3 DISCUSSION

#### 4 A. The Complaint

5 The Complaint alleges “4<sup>th</sup> Amdt. deprivation to secure evidence and denial of proper  
6 grievance process.” *See* Complaint, Dkt. 8 at 3. Specifically, Plaintiff alleges:

7 T. Walker destroyed evidence that was deframental to my civil suit  
8 KCO is violating my civil rights Month of June 2024, Kitsap  
9 County Jail noon on the month of June. Mental anguish incurred  
10 by T. Walker witnesses by officer Davenport & witnessed by all of  
11 C-pod @ lunch when I repeatedly stated T. Walker was destroying  
evidence for my case. Headache, anxiety and night terrors due to  
this situation I’m receiving mental health treatment now on RX. I  
am requesting \$800 K for the damages to my health and wellbeing.

12 *Id.* at 4-5.

#### 13 B. Legal Standards

14 To avoid dismissal, a § 1983 complaint must contain sufficient factual matter, accepted  
15 as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664  
16 (2009). The factual allegations must be “enough to raise a right to relief above the speculative  
17 level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint may be  
18 dismissed if it lacks a cognizable legal theory or states insufficient facts to support a cognizable  
19 legal theory. *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

20 To sustain a § 1983 civil rights claim, Plaintiff must show (1) he suffered a violation of  
21 rights protected by the Constitution or created by federal statute, and (2) the violation was  
22 proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487  
23 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the  
second prong, Plaintiff must allege facts showing how individually named defendants caused or

1 personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d  
2 1350, 1355 (9th Cir. 1981). A defendant cannot be held liable solely on the basis of supervisory  
3 responsibility or position. *Monell v. Department of Social Servs., of City of New York*, 436 U.S.  
4 658, 691–94 (1978). Rather, a plaintiff must allege a defendant’s own conduct violated the  
5 plaintiff’s civil rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385–90 (1989).

### 6 C. Deprivation of Property Claims

7 Plaintiff alleges his rights were violated because Defendant Walker destroyed his  
8 property. However, where a prisoner alleges deprivation of property by the unauthorized acts of  
9 state officials, either negligent or intentional, he cannot state a constitutional claim where an  
10 adequate state post-deprivation remedy exists. *See Zinermon v. Burch*, 494 U.S. 113, 129–32  
11 (1990); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding unauthorized negligent or  
12 intentional deprivation of property does not violate due process if a meaningful post-deprivation  
13 remedy is available); *Parratt v. Taylor*, 451 U.S. 527, 535–44 (1981) (negligent loss of prisoner's  
14 hobby kit), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330–31  
15 (1986).

16 The Ninth Circuit has specifically held that an adequate post-deprivation remedy for  
17 confiscated property is available in the State of Washington through, for example, the  
18 Washington State Tort Claims Act, R.C.W. § 4.92.090. *Joshua v. Newell*, 871 F.2d 884, 887 (9th  
19 Cir. 1989). Similarly, under Washington law, “all local governmental entities ... shall be liable  
20 for damages arising out of their tortious conduct.” R.C.W § 4.96.010. As plaintiff has an  
21 adequate Washington post-deprivation remedy for the alleged wrongful taking of his property his  
22 § 1983 complaint fails and should be dismissed with prejudice.

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1           **D.      Physical Harm Requirement**

2           Plaintiff’s complaint alleges the deprivation of his property has caused him emotional  
3 harm for which he is now receiving mental health treatment. There are no allegations that  
4 Defendants physically harmed him in any way and thus the complaint fails to set forth sufficient  
5 facts to obtain the remedy sought – money damages for emotional harms. This conclusion flows  
6 from the fact that the Prison Litigation Reform Act requires an incarcerated plaintiff (whether  
7 already convicted or a pretrial detainee) to prove a “physical injury” as a condition of recovering  
8 compensatory damages for mental or emotional harms. 42 U.S.C. § 1997e(e).

9           **E.      Grievance Procedures**

10          Plaintiff also alleges a “denial of proper grievance process.” Dkt. 8 at 6. He also avers he  
11 “wrote over a dozen grievances & requests. Was unable to proceed through the grievance  
12 process.” *Id* at 7. Prisoners lack a separate constitutional entitlement to a specific prison  
13 grievance procedure, and hence Defendant’s handling of the grievances that plaintiff submitted  
14 fails to state a claim upon which relief may be granted. *See, e.g., Ramirez v. Galaza*, 334 F.3d  
15 850, 860 (9th Cir. 2003) (“Ramirez’s claimed loss of a liberty interest in the processing of his  
16 appeals does not satisfy this standard, because inmates lack a separate constitutional entitlement  
17 to a specific prison grievance procedure.”) (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.  
18 1988)); *see also Ewalan v. St. Germain*, No. 22-36005, 2024 WL 3325533 (9th Cir. 2024)  
19 (“Summary judgment was proper for defendant Dahne on the claim alleging deficiencies in the  
20 grievance process because ‘inmates lack a separate constitutional entitlement to a specific prison  
21 grievance procedure.’”). Accordingly, plaintiff’s allegations regarding the grievances he  
22 submitted to Defendants and lack of a “proper procedure” do not state a claim upon which relief  
23 may be granted and should be dismissed with prejudice.

**OBJECTIONS AND APPEAL**

This Report and Recommendation is not an appealable order. Therefore, Plaintiff should not file a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit until the assigned District Judge enters a judgment in the case.

Objections, however, may be filed no later than **September 20, 2024**. The Clerk shall note the matter for **September 27, 2024**, as ready for the District Judge's consideration. The failure to timely object may affect the right to appeal.

DATED this 6<sup>th</sup> day of September, 2024.



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BRIAN A. TSUCHIDA  
United States Magistrate Judge